

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

29262

**FILE:** B-216108

**DATE:** September 4, 1984

**MATTER OF:** Valley Forge Flag Co., Inc.

**DIGEST:**

1. Bid offering payment terms different from those specified in the solicitation was properly rejected as nonresponsive, since such an offer affects price and constitutes a material deviation.
2. Bid submitted with material deviation was nonresponsive and could not be corrected after bid opening to make it responsive at the bidder's option since an unfair advantage would be gained.
3. A contracting agency cannot be estopped, because of erroneous acts of its agents, from rejecting a bid required by law to be rejected as nonresponsive.
4. Maintenance of the integrity of the competitive bidding system outweighs a monetary advantage which might be realized in a particular instance if a nonresponsive deviation in a bid were corrected or waived.

The Valley Forge Flag Co., Inc. (Company), protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. B0/TC/N-00472 issued by the General Services Administration (GSA) for flags and accessories.

We deny the protest without obtaining a report from the contracting agency, in accordance with section 21.3(g) of our Bid Protest Procedures, 4 C.F.R. § 2.3(g) (1984), since the protest is without legal merit on its face.

The IFB provided that payments under the contract would be due 30 calendar days after the date of actual receipt of a proper invoice in the designated office or the date the supplies are accepted by the government, whichever is later. However, the Company's bid provided in the "Discount for Prompt Payment" block on the IFB: "Net 20 days."

029950

The Company contends, first, that GSA acted unreasonably and contrary to regulations by attributing to the Company a purposeful intention to insert in its bid a term in conflict with the terms of the IFB which would result in rejection of the bid. The Company alleges, therefore, that GSA should have known that the insertion of the 20-day limitation was an error and should have obtained verification of the bid under the Federal Procurement Regulations (FPR), 41 C.F.R. § 1-2.406-1 (1984), and permitted correction of the mistake under FPR, 41 C.F.R. § 1-2.406-2.

In order to be responsive, a bid must contain an unequivocal offer to perform in conformance with the material terms of the solicitation, and any bid which does not do so is not responsive and must be rejected. Our Office has defined a material deviation as one which affects the price, quality, or quantity of goods or services offered and has held that a 20-day payment term, where the solicitation provides for payment in 30 days, affects price, since the bidder would require payment 10 days sooner than any other bidder. RAD Oil Company, Inc., B-209047, Oct. 20, 1982, 82-2 C.P.D. ¶ 352. The bid of the Company, therefore, materially deviated from the IFB and was properly held nonresponsive.

A bid that is nonresponsive may not be corrected after bid opening to be made responsive, since the nonresponsive bidder would receive the competitive advantage of choosing to accept or reject the contract after bids are exposed by choosing to make its bid responsive or not. Jewel Associates, B-213456, Mar. 20, 1984, 84-1 C.P.D. ¶ 335.

The Company next argues that GSA is estopped to reject the bid of the Company as nonresponsive because GSA submitted to the Small Business Administration (SBA) the issue of the ability of the Company to perform the contract and only after the SBA issued a certificate of competency was its bid rejected as nonresponsive.

It appears that initially the agency found the Company nonresponsive and referred the matter to SBA instead of immediately rejecting the bid as nonresponsive. We have held, however, that erroneous actions by contracting officials cannot estop an agency from rejecting a bid as nonresponsive when it is required by law to do so. Norris Paint & Varnish Co., Inc., B-206079, May 5, 1982, 82-1 C.P.D. ¶ 425.

Finally, the Company alleges that rejection of its bid is costly to the government and GSA has an obligation to the taxpayers and to the government to so consider and construe bids as to avoid a costly result.

We have held, however, that the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize a monetary savings in a particular procurement if a material deficiency is corrected or waived. RAD Oil Company, Inc., B-209047, supra.

*for Milton J. Arosen*  
Comptroller General  
of the United States